



# CITY OF NEWTON, MASSACHUSETTS

## Department of Planning and Development

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Public Hearing Date:	October 9, 2007
Land Use Action Date:	December 11, 2007
Board of Aldermen Action Date:	December 17, 2007
90-Day Expiration Date:	January 8, 2008

TO: Board of Aldermen

FROM: Michael Kruse, Director of Planning and Development  
Candace Havens, Chief Planner  
Robert Merryman, Senior Planner

SUBJECT : Petition #279-07 of BRENDAN GARRY for a SPECIAL PERMIT/SITE PLAN APPROVAL and EXTENSION OF NON-CONFORMING USE to legalize a third unit: for a waiver of one parking stall; and for an alteration of open space and a SPECIAL PERMIT/SITE PLAN APPROVAL for a .3 foot grade change to legalize an existing retaining wall at 218-220 NEWTONVILLE AVENUE, Ward 2, NEWTONVILLE, on land known as Section 13, Block 3, Lot 13, containing approximately 7,624 sq. ft. of land in a SINGLE RESIDENCE 2 DISTRICT.

CC: Mayor David B. Cohen

The purpose of this memorandum is to provide the Board of Aldermen and the public with technical information and planning analysis that may be useful in the special permit decision-making process of the Board of Aldermen. The Planning Department's intention is to provide a balanced view of the issues with the information it has at the time of the public hearing. There may be other information presented at or after the public hearing that the Land Use Committee of the Board of Aldermen will consider in its discussion at a subsequent Working Session.

### EXECUTIVE SUMMARY

**The petitioner bought the subject property in 2004, at which time it appears that he eliminated the old garage built an 8-foot high retaining wall and added an asphalt parking area. Originally constructed as a two-family dwelling it is now being used as a nonconforming three-family home that the petitioner is requesting to have legalized. The request includes a parking space waiver and a waiver of required open space.**

City of Newton

V:113.81



The information on this map is from a digital data base accessed using the Newton Geographic Information System (GIS). Newton cannot guarantee the accuracy of the information contained on this map. Each user of the map is responsible for determining its suitability for his or her intended use or purpose. City departments will not necessarily approve applications based solely on GIS data. Applicants for permits and licenses must inquire of the relevant city department for the appropriate requirements. City staff correct some in these data as they are identified. Newton's GIS Administrator maintains records regarding the source materials and methods used to create the digital data and will disclose this information upon request.

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## ELEMENTS OF THE PETITION

The subject property is located at 218-220 Newtonville Avenue, and consists of a 7,624 sq. ft. lot improved with a late 19<sup>th</sup> century 3Y2-story residence. The lot is currently improved with three separate units, although the petitioner stated that the unit on the 3<sup>rd</sup> floor does not have a kitchen, which he proposes to add. The petitioner has made alterations to the site without the necessary permits. Now he requests that the Board approve a nonconforming 3-family dwelling, including demolition of the two-car garage (circa 1924), construction of a 6-stall parking area and an 8-foot high retaining wall (*a grade change of more than 3-feet*). Additionally, work on the site has reduced the open space to an amount below the minimum 50%. Relief has also been requested for the grade change.

The Planning Department believes that the requested open space relief requires action from the Zoning Board of Appeals, as the reductions have occurred without permit (*currently existing 40.1%*) and, therefore, are not existing non-conforming. The petitioner plans to reduce the relief needed (*minimum open space requirement of 50%*) by eliminating one of the parking stalls needed to meet the parking requirement total of 6 parking spaces, 2 per unit. The petitioner has not submitted floor plans or a landscape plan.

Because of the apparent recent construction of a major retaining wall (*ranging in height from approximately 3 ft. to 8 ft.*), the petitioner should provide whatever additional documentation he can find to prove the original grade around the house has not changed and, therefore, the building height (and/or stories) has not changed and further relief is not needed.

## **II. ZONING RELIEF BEING SOUGHT**

*The City's Chief Zoning Code Official (CZCO) has completed his review of this petition. A copy of his Zoning Review Memorandum, dated September 10, 2007, is attached to this document (SEE ATTACHMENT "A").*

*In accordance with this review, the petitioner is seeking approval through or relief from the following sections of the City's Zoning Ordinance:*

- *Section 30-21(a)(2)(b) allows the Board of Aldermen to grant a special permit for an extension of a non-conforming use to convert a two-family dwelling to a 3-family dwelling within the Single Residence 2 District in accordance with the procedures in Section 30-24;*
- *Section 30-19(m) allows the Board of Aldermen to grant a special permit to allow for exceptions to the parking requirements, as follows:*
  - a. *Section 30-19(d)(1), to allow for 5 parking spaces where 6 are required for a 3-unit dwelling;*
  - b. *Section 30-19(g) (1) to allow for 1 parking stall within the side yard setback; and*
  - c. *Section 30-19(g)(2), to allow for waivers of minimum stall width and length;*
- *Section 30-5(b)(4) allows the Board of Aldermen to grant a special permit to allow for a grade change of more than 3 feet; and*

➤ *Section 30-23 Site Plan Approval.*

*The petitioner has not submitted adequate information regarding open space, number of stories, height of residential structure, topography and average grade prior to 3-foot grade change, all of which may need approvals from the Zoning Board of Appeals instead of relief from the Board of Aldermen.*

**III. SIGNIFICANT ISSUES FOR CONSIDERATION**

*In reviewing this petition, the Board should consider the following:*

- *Whether a 3-unit multi-family dwelling would be substantially more detrimental to the neighborhood than the existing non-conforming two-family dwelling;*
- *Whether the design and scale of the parking area is appropriate given the character of the surrounding neighborhood;*
- *Whether the waiver to allow for tandem parking and/or the reduction in the driveway width will have any adverse impacts on vehicular or pedestrian movements to/from and through the site;*
- *Whether the alterations to the existing grade, by more than 3 ft., has had any adverse impacts on the immediate abutters; and*
- *Whether approval of multiple alterations to the site without proper permits should be given, particularly where it is not known if the alterations may be unsafe and have negative effects on abutters and neighborhoods.*

**IV. CHARACTERISTICS OF THE SITE AND NEIGHBORHOOD**

**A. Site**

The subject property is located at 218-220 Newtonville Avenue and consists of a 7,624 sq. ft. lot improved with a late 19<sup>th</sup> century residence. The site is currently improved with a 3-story, two-family dwelling with a 1,750 sq. ft. asphalt parking area bordered by an up to 8-foot high retaining wall. The subject property is one of the smaller lots on the block that is within the Single Residence 2 District. According to the City Assessor's Database, the existing residential structure was built in 1924 and has approximately 3,433 sq. ft. of floor area on three floors including the basement. The existing driveway is 12 feet wide and located on the western lot line and services the new 5-7 stall parking area.

**B. Neighborhood and Zoning**

The subject parcel is located within a transitional area between Newton Corner and Newtonville that includes 4 different zoning districts. The property is bordered on the north, east and west by two-family dwellings, and on the south by a single-family dwelling. Farther north, across the MBTA Green Line tracks, are various commercial offices on Centre Street. The subject parcel is located 1/2 block from the MassPike and one block from a small Manufacturing District.

The subject lot is within a Single Residence 2 District, which is abutted on the north and west by a Multi Residence I District. The Cabot playground is farther to the west and is included in a Public Use District.



VIEW FROM NEWTONVILLE AVENUE VIEW OF THE PARKING/3 FT. GRADE CHANGE

## V. ANALYSIS

### A. Dimensional Controls – Section 30-15

The following table compares the requirements for a Special Permit for a 3-unit multifamily dwelling within a Single Residence 2 District to the technical requirements established in Section 30-15, Table 1:

SINGLE RESIDENCE 2 (OLD LOT)	Required	Existing 2-family dwelling	Proposed 3-family dwelling
Min. lot size	10,000 sq. ft.	<b>7,624 sq. ft.</b>	<b>7,624 sq. ft.</b>
Min. lot area per unit	10,000 sq. ft.	<b>3,812 sq. ft.</b>	<b>2,541 sq. ft.</b>
Min. Frontage	80 ft.	<b>64 ft.</b>	<b>64 ft.</b>
Setbacks			
Front	25 ft.	<b>18.1 ft.</b>	<b>18.1ft.</b>
Side (west)	7.5 ft.	13.6 ft.	13.6 ft.
Side (east)	7.5 ft.	19.9 ft.	19.9 ft.
Rear	15 ft.	39.4 ft.	39.4 ft.
Max. Building height	30 ft.	<b>Unknown</b>	<b>32.15 ft.</b>
Max. # of stories	2 1/2 stories	<b>Unknown</b>	<b>Unknown</b>
Max. Floor Area Ratio (FAR)	.4	<b>0.45</b>	<b>0.45</b>
Max. Bldg. Lot Coverage	30%	20.5%	20.5%
Min. Open space	50%	<b>Unknown</b>	<b>44.4%</b>

As shown in the table above, the structure pre-dates the existing zoning and is considered to be a legal non-conforming two-family dwelling with non-conforming lot area, frontage and front setback.

The petitioner states that the subject property contains a legal non-conforming three-family dwelling with non-conforming, building height and open space, and has provided some evidence of the three-family occupancy. No validating information has been provided as to height and open space. Specifically, no information was received regarding the existing topography, average grade, number of stories, and building height.

#### **B. Parking Ordinance — Section 30-19**

The following compares the proposed parking against the parking requirements for a nonconforming three-family dwelling, per Section 30-19:

<b>SECTION 30-19</b>	<b><i>REQUIRED</i></b>	<b><i>EXISTING</i></b>	<b><i>PROPOSED</i></b>
Min. Number Stalls	2 stall/dwelling unit	6-7 Parking stalls constructed without permit	<b>5 stalls</b>
Min. Setbacks			
Front	25 ft.	77 ft.	77 ft.
Side	7.5 ft.	<b>1 ft.</b>	<b>1 ft.</b>
Rear	0 ft.	1 ft.	1 ft.
Min. Stall Length	19 ft.	19 ft.	<b>15 ft.</b>
Min. Stall Width	9 ft.	9 ft.	<b>8 ft.</b>
Driveway Width	12 ft. min; 20 ft. max.	12 ft.	12 ft.

As the above table indicates, the petitioner's parking facility does not provide the required minimum number of stalls for a 3-unit multi-family dwelling. Additionally, none of the parking stalls meet the minimum stall width, two stalls do not comply with the minimum stall length and one stall is within the side yard setback. As previously mentioned, the petitioner plans to reduce the existing parking facility (*constructed without the necessary permit*) from 7 stalls to 5 stalls in an effort to create more open space. Although the proposed landscape area shows cross-hatching on top of existing pavement, no landscape materials have been shown and no protective curbing provided. The Planning Department believes that the requested open space relief requires action from the Zoning Board of Appeals, as the reductions have occurred without permit (*currently existing 40.1%*) and, therefore, are not existing non-conforming.

### C. Relevant Site Plan Approval Criteria

1. Convenience and safety of vehicular and pedestrian movement within the site and in relation to adjacent streets, properties or improvements.

The now existing parking layout may not meet this criterion, as pedestrian movement within the site (*from the stairs off the rear deck with access directly into a parking stall*) may pose a potential safety hazard.

2. Adequacy of the methods for disposal of sewage, refuse and other wastes and of the methods of regulating surface water drainage

The Associate City Engineer has not been provided with requested information regarding the surface water drainage. The petitioner should be expected to provide this information prior to closing the public hearing.

3. Screening of parking areas and structures on the site from adjoining premises or from the street

The proposed landscape area will be in the shadows of an 8-foot high retaining wall (south edge of the property) and on the edge of the parking facility adjacent to two parking spaces. The Planning Department believes that this petition fails to meet the intent of this screening criterion.

4. Avoidance of major topographical changes so tree and soil removal shall be minimized

The petitioner is proposing legalizing a grade change of more than 3 feet at the rear of the property that has removed approximately 1,000 sq. ft. of open space and replaced it with asphalt. No plans were submitted that show pre-existing vegetation. Additionally, no evidence was provided indicating compliance with the City's Tree Preservation Ordinance.

5. Location of utility service lines underground wherever possible

The petitioner stated that all utility service lines are underground from the street.

6. Avoidance of the removal or disruption of historic resources

The subject property is over 50 years old and is considered a historic gable residence with garage, circa 1922. Any permits for demolition should have been reviewed by the Newton Historical Commission before altering the garage.

D. Relevant Special Permit Criteria – Section 30-24

1. The specific site is an appropriate location for such use / structure

The existing site appears to be an appropriate location for a two-family dwelling, as there are many other two-family homes nearby (*the subject property is within a Single Residence 2 District*). The Planning Department does not believe that changes made, without benefit of the necessary permits to convert the structure to a three-family dwelling with 7 parking stalls and an 8-foot high wall, are compatible with the surrounding single- and two-family dwellings.

2. The use as developed and operated will not adversely affect the neighborhood

Additional information is needed to determine whether drainage is sufficiently controlled or whether the retaining wall is safely constructed. A floor plan has not been submitted, so it is not possible to verify the number of living units or required parking and general activity on the site.

3. There will be no nuisance or serious hazard to vehicles or pedestrians

As previously mentioned, direct access off the rear deck into a parking stall may pose a potential safety hazard.

4. Access to the site over streets is appropriate for the types and numbers of vehicles involved

The net increase of traffic related to the legalizing the unit should be negligible.

E. Extension of Non-conformink Use Section 30-21(b)

*The petitioner presented information to the Commissioner of Inspectional Services including several affidavits, and after several re-submissions and more affidavits the Commissioner determined that the third floor unit was in existence as of December 31, 1979. The Commissioner further determined that since the property is a legal two-family dwelling in a Single Residence 2 District, the petitioner should seek either a special permit or variance to legalize the third unit. (Letter to Michael Peirce, dated August 11, 2007 – SEE ATTACHMENT "B")*

VI. SUMMARY

The Planning Department has concerns regarding the multiple changes made on the subject property without the necessary permits or approvals for:

- o Demolition of the 2-car garage (circa 1924) without Newton Historical Commission review or permit from the Inspectional Services Department;
  - o A grade change of more than 3 feet and an up to 8-foot high retaining wall;
  - o A parking facility containing seven parking stalls that does not comply with the dimensional controls of the City' Zoning Ordinance;
  - o A surface water (parking lot) drainage system;
  - o Reduction of open space to the currently existing 40.1%; and
- Alterations within the two-family structure.

Further, the Planning Department also has concerns that the petitioner has not submitted a landscape plan or a floor plan that are needed to determine whether further relief is needed. While the Planning Department supports the Commissioner's determination that the third floor dwelling unit was in existence as of December 31, 1979, we are concerned about the amount of work completed on the subject property over the last three years without benefit of the necessary approvals and permits.

## ***Zoning Review Memorantawm***

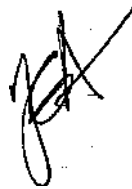
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Dt: September 10, 2007

To: G. Michael Peirce, representing Brendan Garry

Fr: Juris Alksnitis, Chief Zoning Code Official

Cc: Michael Kruse, Director, Department of Planning and Development  
John Lojek, Commissioner of Inspectional Services



**RE: Extension of non-conforming use; parking waivers.**

**Applicant: Brendan Garry**

**Site:** 218-220 Newtonville Ave.

**SBL:** Section 13, Block 3, Lot 13

**Zoning:** Single Residence 2

**Lot Area:** 7,624 sq. ft. [per plan]

**Current use:** Two-family dwelling

**Prop. use:** Three-family dwelling

**Background:**

The original house was constructed as a two-family dwelling in 1924 when the property was zoned General Residence. Subsequently in 1925, the property was rezoned Single Residence making the 2F dwelling a legal non-conforming use. Later, a third unit was constructed by prior owners within the building during the early 1960's, apparently without benefit of building permit or approval from the Board of Aldermen. While the applicant initially sought to qualify this unit as a pre-existing accessory apartment, the Commissioner of Inspectional Services determined that the legalization provision was not available to nonconforming 2F dwellings. As a result, the petitioner now seeks to obtain approval of the third unit pursuant to Section 30-21(b) as an extension of nonconforming use from a 2F to a 3F. In addition, the petitioner seeks approval of a more recently constructed parking area involving a number of parking waivers. The above necessitate Board of Aldermen approval pursuant to Sections 30-21(a)(2)b), 30-21(b) and 30-19(m) and also variances from the Zoning Board of Appeals.

**Administrative determinations**

1. The subject dwelling is located on a lot deemed to be a pre-1953 lot. The following discussion is based on such plans as have been received to date and are referenced in Plans and Materials Reviewed, below.
2. The subject locus is currently within an SR-2 zone, so renamed effective August 27, 1987 as successor designation for the Single Residence B zone as part of a major Zoning Ordinance update. The Zoning Atlas maintained by the Engineering Division indicates that at the time of adoption of the original Zoning Ordinance Dec. 27, 1922, the subject property was initially zoned General Residence, a zone which allowed multi-family dwellings (more than 2 fam.). While ISD files do not contain the original building permit for this dwelling, Garage Permit 1116-1723 issued October 10, 1924 gives an address with two units. Subsequently, the Zoning Atlas indicates the area containing the subject lot as being in the Single Residence zone from May 6, 1925 until changed to the Single Residence B zone Nov. 25, 1940, later renamed SR-2 in 1987. Single Residence zones in effect since 1925 limit residential dwellings to single-family use.

Zoning history summary of lot per Engineering Zoning Atlas:

- Dec. 27, 1922 – General Res. By-right res. for more than 2F, incl. apt. house, etc.
- May. 6, 1925 – Single Res. By-right 1F max
- Nov. 25, 1940 – Single Res. B By-right 1F max
- Aug. 27, 1987 – Single Res. 2 By-right 1F max

It appears that some time in the early 1960's a third unit was added without the necessary permits and approvals. The current owner seeks to legalize the third unit by petitioning for an extension of non-conforming use subject to approval by the Board of Aldermen pursuant to Section 30-21(b). Should the Aldermen grant the petition, this would authorize a three-family dwelling in the Single Residence 2 zone.

3. Although the petitioner seeks approval of a three-family dwelling, no elevation plans or floor plans have been provided describing the building. The applicant's attorney represents that the third unit is located on the top floor. While no changes are currently proposed to the building, it appears that a number of changes have occurred over time without benefit of permit, such as upper floor improvements for the subject additional third unit. However, the applicant's attorney represents that the current owner has not reinstalled the kitchen pending Board of Aldermen approval of this petition. It is also noted that the basement level is fully exposed on two sides, contains a decorative main door, framed windows, painted exterior, etc. The applicant is responsible for providing elevation and floor plans acceptable to the Board of Aldermen per Section 30-23(b)(6) and (b)(8) and all improvements not documented by building permits require the approval of the Commissioner of Inspectional Services.
4. While the applicant's attorney represents that various improvements have been inspected by the ISD staff, files do not contain information indicating compliance with life safety codes. It is suggested the applicant arrange an inspection by the Inspectional Services Department (ISD) to confirm that all applicable structural and life safety codes are met. The applicant also needs to meet all applicable fire equipment access requirements and engineering standards pertaining to water supply, sewer lines, grading, drainage, etc. Should these elements not be fully addressed at the time of application to the Board of Aldermen for special permit, it is recommended such special permit, if granted by the Board, be approved only on condition of full compliance with all applicable life safety codes as well as engineering standards.
5. *Section 30-15, Table 1 – Density & Dimensional Controls in Residence Districts and for Residential Uses* establishes the applicable parameters. Constructed at a time when the lot was zoned General Residence, the premises are "grandfathered" as to several Table 1 parameters such as lot size, frontage and height, and meets a number of other requirements such as side setbacks, rear setback and lot coverage. However, taking into account the exposed basement area, which does not meet the *Section 30-1* definition of "basement", and improvements on the top floor, this building may have become a 4-story building. In such case this would exceed both the previous 3-story limit (allowed until 1997), and current story limit of 2.5 stories. At the present time, a maximum of three stories may be allowed subject to special permit. The applicant is responsible for providing such information as necessary to determine the actual story count consistent with *Section 30-1, Definitions*. In the event, the building has attained 4 stories as a result of cumulative changes, the petitioner would need to seek relief from the Zoning Board of Appeals for exceeding the story limit.

6. The minimum open space requirement of 50% has been in effect since 1987 for 2F dwellings on pre-1953 lots in the SR-2 zone. While the subject building pre-exists this requirement, it covers only 20.5% of the site as indicated on submitted plans. It is noted that existing site conditions also include a major retaining wall system and paved area in the rear further reducing open space. A 1979 aerial photograph provided by the Engineering Division indicates an accessory garage in the rear, but is not conclusive as to a rear parking area or associated retaining wall. ISD files do not contain any plans or permits for this major site improvement. While the applicant's attorney represents that the current retaining wall is the result of repair of a previously existing retaining wall, he was unable to provide the date of these improvements. As a result, it is unclear when the rear parking area and retaining wall were constructed reducing open space below 50%. Observations noted at recent site visits suggest that the parking improvements appear to be of fairly recent origin. A revised plan received 9/10/07 from the applicant indicates that the existing open space of 40.1% would be increased to 44.4% with inclusion of the "proposed landscape area" noted by hash-marks on plan, yet remains below the 50% minimum. Without further information providing the history of this site alteration, it is not possible to consider the currently existing substandard open space a valid nonconforming condition. In the event the parking improvements were constructed after 1987 reducing open space to the currently existing 40.1%, this would constitute a violation of Table 1 and require relief from the Zoning Board of Appeals.
7. Section 30-19(d), *Number of Stalls*, subsection (2) requires 6 parking spaces for a 3-unit multi-family dwelling. It is noted that the existing rear parking area appears to accommodate 6 – 7 lined and unlined informal parking spaces. Proposed plans indicate that a portion of the parking area containing 2 informal spaces would be converted to a landscaped area. As a result, five spaces would be provided on site, with access by means of a 12ft. wide driveway. In addition, it is noted that if this were a 6 space facility, 30-19(h)(2)c) would also require one HP stall. However, in this case, five stalls are proposed, necessitating a waiver from the Board of Aldermen per Section 30-19(m) to allow reduction of the required number of spaces.
8. Section 30-19(g), *Parking Facilities Containing Five Stalls or Less*, establishes the respective parking parameters applicable to parking facilities of this size. It appears that these spaces were constructed after 1977, when the City adopted the parking stall and facility requirements currently in effect. The proposed parking facility contains undersize parking spaces throughout. In addition, although prohibited by Section 30-19(g)(1), one rear stall is also located within the side setback distance of 7.5 ft. The preceding necessitates respective waivers from the Board of Aldermen per Section 30-19(m) for stall size and placement within the side setback. Alternatively, the applicant may wish to consider revising the parking layout to conform to applicable standards.
9. Section 30-19(i) *Landscaping*, subsection (1) establishes the perimeter screening requirements applicable to parking facilities containing more than five stalls. As proposed parking will not exceed this number, the referenced perimeter landscaping requirement does not apply with respect to parking. However, also see paragraph 10, below.
10. Section 30-23(b)(6) in conjunction with Section 30-24(a) requires the submittal of a site landscape plan. The applicant has not provided such a plan, stating that no significant landscaping is proposed. However, plans show a "proposed landscape area", yet no further information is provided. The applicant is responsible submitting a landscape plan acceptable to the Board of Aldermen and also for ensuring that the proposed plan meets the applicable requirements of Section 20-31 through 20-39, *Tree Preservation Ordinance*.

11. Section 30-19(j), *Lighting, Surfacing, and Maintenance of Parking Facilities*, subsection (1) establishes the lighting requirements for outdoor parking facilities containing more than 5 stalls, not applicable in this case. However, a series of nine light poles have been installed along the driveway side and rear of the parking area. The applicant's attorney indicates these light poles are approximately 6 ft. high. Located very close to the side and rear lot lines, these poles are subject to the respective setbacks of 7. 5 ft. and 15 ft. applicable to accessory structures per Section 30-15(m). As a result, the applicant needs to obtain relief from the Zoning Board of Appeals for encroachments within the setbacks. Moreover, such lighting must meet the requirements of Ordinance X-142, *Light Ordinance*, as set out in sections 20-23 through 20-28 pertaining to *Light pollution* and *Light trespass*.

12. Section 30-5(b)(4) requires a special permit whenever "...the existing contours of the land are to be altered by more than three (3) feet." Submitted plans indicate a major retaining wall installed in conjunction with the rear parking area, ranging in height from approximately 3 ft. to 5 ft. above finished grade. While of relatively recent construction, there are no building permits on file. The applicant's attorney has stated that the current wall is the result of repairs to a previous retaining wall, and that therefore no permits were obtained, nor was a special permit for exceeding a three-foot grade change requested. Given the wall's height, length, and apparent recent construction, it appears to be a new wall rather than a repair job. As such the applicant should obtain inspection and approval of work by the ISD, and also approval from the Board of Aldermen for a grade change exceeding 3 ft.

13. See "Zoning Relief Summary" below.

<b>Ordinance</b>	<b><i>Zoning Relief Summary</i></b>	<b><i>Action Required</i></b>
	<b>Non-conforming</b> 14§9.	
30-21 (a)(2)(b) 30-21 (b)	Approval of extension of nonconforming use from 2F dwelling to 3F dwellin in the SR-2 zone	X
	<b>Non</b>	
30-15, Table 1 30-21(b)	Approval to decrease open space to proposed 44.4%. Also see para. 6 above, and Variances, below.	TBD*
	<b>Site'</b>	
30-5(b)(4) 30-23	Approval of grade change exceeding 3 ft. and related retaining walls. See para. 12, above.	
30-23	Approval of site Alan, including landscape plan.	
30-9(d)(2) 30-19(m)	Approval of waiver to reduce the <sup>n</sup> required number of parking spaces from 6 to 5.	
30-9(g)(1) 30-19(m)	Approval to waive parking side setback to allow placement of one stall in southwest corner of lot, to be located within approximately 1 ft. of the side lot line.	X
30-19(g)(2) 30-19(m)	Approval to waive 9ft. x 19ft. stall size reducing three stalls to 8ft x 19 ft. and reducing two stalls to 8 ft. x 15ft.	

<b>Zoning Relief Summary (Cont.)</b>		
<b>Ordinance</b>		<b>Action Required</b>
	<b>Sri</b>	
	N/A	
	<b>Special Permit</b>	
30-24(d)	Approval of special permit	X
	<b>Variances</b>	
30-15, Table 1 30-27	Approval of variance for up to a 4 story building in the SR-2 zone. See para. 5, above.	TBD*
30-15, Table 1 30-27	Approval of variance to allow reduced open space of 44.4%. See para. 6, above.	
30-15, Table 1 30-15(m) 30-27	Approval of variance to allow placement of light poles within right side and rear setbacks, respectively.	

TBD\* = To be determined

**Plans and Materials Reviewed:**

- Plan titled "Site Plan Newton, MA, Showing Proposed Conditions at 218-220 Newtonville Avenue", dated November 9, 2006, last revised 8/10/07 prepared by VTP Associates, Inc., Land Surveyors – Civil Engineers, 132 Adams St., Newton, MA 02458, bearing no stamp or signature of a registered professional.
- Plan titled "Area Plan of Land, Newton, MA, at 218-220 Newtonville Avenue", dated 7/23/07, prepared by VTP Associates, Inc., Land Surveyors – Civil Engineers, 132 Adams St., Newton, MA 02458, stamped and signed by James J. Abely, Professional Land Surveyor.

City of Newton



David B. Cohen  
Mayor

## Inspectional Services Department

John D. Lojek, Commissioner  
1000 Commonwealth Avenue  
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Electrical Division  
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August 11, 2006

G. Michael Peirce, Esq.  
Van Wert, Zimmer & Conlin, P.C.  
245 Winter Street, Suite 400  
Waltham, MA 02451-8709

Re: 218-220 Newtonville Avenue/Amnesty Apartment

Dear Mr. Peirce:

I am in receipt of your letters, which enclosed sworn affidavits from the former owner of the property, an abutter who indicated 45 years of familiarity with the property and three (3) prior tenants. You have also provided a listing of occupants you state was compiled using Polk's Directories and the city's assessed polls.

You have requested that I determine upon review of your materials that pursuant to Section 30-8(d)(4) b) that "after weighing all the evidence" that the third floor dwelling unit was in existence as of December 31, 1979 and going forward from that date, as "supported by a preponderance of the evidence." Based upon that review I conclude that you have met the burden of proof as contained in the ordinance.

However, as we have discussed, I have also determined that since the property is a legal 2-family house located in a single residence zone and not located in a multi-family zone that you cannot follow the usual subsequent stages of the process, namely planning department review and ultimately the issuance of a certificate of occupancy. The so-called amnesty ordinance does not provide for that option under these circumstances. In order to legalize this unit you will need to review the ordinances and seek either a special permit or variance.

Sincerely,

o D. Lojek  
—Commissioner of Inspectional Services